

## Response

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Serial No.: 09/732,236

Confirmation No.: 9502

Filed: December 7, 2000

For: NEAR-INFRARED DISGUISE DETECTION

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Remarks

The Office Action mailed 14 July 2004 has been received and reviewed. No claims have been amended or cancelled. Therefore, the pending claims are claims 1-37. Reconsideration and withdrawal of the rejections are respectfully requested in view of the remarks provided herein.

Applicant thanks the Examiner for reviewing and withdrawing all previous rejections, and acknowledges Examiner's new grounds for rejection.

The 35 U.S.C. §103 Rejection

The Examiner has newly rejected claims 1-6, 14-19, 21, 23, 27, 29 and 33-37 under 35 U.S.C. §103(a) as being unpatentable over Prokoski, Disguise detection and identification using infrared imagery, XP-001028502, in view of Pavlidis et al., A Near-Infrared Fusion Scheme for Automatic Detection of Vehicle Passengers, XP-001028284 (hereinafter "Pavlidis et al./XP-001028284"); claims 8-13, 25 and 26 under 35 U.S.C. §103(a) as being unpatentable over Prokoski and Pavlidis et al./XP-001028284 as applied to claims 1, 16 and 29 and further in view of Smoot (U.S. Serial No. 5,940,139); and claims 7 and 20 under 35 U.S.C. §103(a) as being unpatentable over Prokoski and Pavlidis et al./XP-001028284 as applied to claim 1, and further in view of Udden et al. (U.S. Serial No. 5,180,907). Applicant generally traverses such rejections. However, in view of the discussion below with regard to Pavlidis et al./XP-001028284 being removed as a reference against the present application, any detail remarks regarding such a rejection shall be withheld.

Each of the Examiner's rejections under 35 U.S.C. §103(a) apply the publication Pavlidis et al./XP-001028284. As such, removal of such a reference in the 35 U.S.C. §103(a) rejections overcomes such rejections as not all of the elements of the claims are shown by the remainder of the references.

As cited in the Information Disclosure Statement filed 25 July 2001, and shown in Exhibit B, the publication is cited as: Pavlidis et al., A Near-Infrared Fusion Scheme for Automatic Detection of Vehicle Passengers," Proceedings 1999 IEEE Workshop on Computer

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Vision Beyond the Visible Spectrum: Methods and Applications, 41-48, Fort Collins, CO (June 22, 1999). As such, the publication has a publication date of June 22, 1999.

The present and pending U.S. Patent Application Serial No. 09/732,236 was filed 7 December 2000 and claims the benefit of U.S. Patent Application Serial No. 09/389,925, filed 3 September 1999 (issued as U.S. Patent No. 6,370,260), and also claims the benefit of U.S. Provisional Patent Application Serial No. 60/210,280, filed 8 June 2000. The U.S. Patent Application Serial No. 09/389,925, filed 3 September 1999 (upon which the present application claims priority), contains information similar to the information of Pavlidis et al./XP-001028284 relied on by the Examiner for the rejections under 35 U.S.C. §103(a). The publication of date of Pavlidis et al./XP-001028284 was less than one year before the publication of U.S. Patent Application Serial No. 09/389,925, filed 3 September 1999. As such, Pavlidis et al./XP-001028284 cannot be considered a proper reference under 35 U.S.C. §102(b) for use in the 35 U.S.C. §103(a) rejections.

To the extent that the 35 U.S.C. §103(a) rejections are maintained using Pavlidis et al./XP-001028284 as a reference applicable under 35 U.S.C. §102(a), Applicant addresses such a position herein.

Applicant submits a Declaration under 37 C.F.R. §1.132 swearing that he is the sole inventor of the subject matter claimed in the above-identified U.S. Patent Application Serial No. 09/732,236, filed 7 December 2000, which claims the benefit of U.S. Patent Application Serial No. 09/389,925, filed 3 September 1999 (issued as U.S. Patent No. 6,370,260 to himself, Peter F. Symosek and Bernard S. Fritz) (Exhibit A), and also which claims the benefit of U.S. Provisional Patent Application Serial No. 60/210,280, filed 8 June 2000.

Further, the Declaration indicates that he is coauthor with Peter F. Symosek, Bernard S. Fritz, and Nikolaos Papanikolopoulos of Pavlidis et al./XP-001028284, and also that he is an inventor (with Peter F. Symosek and Bernard S. Fritz) of subject matter that is commonly disclosed between U.S. Patent Application Serial No. 09/389,925, filed 3 September 1999 (upon which the above-identified U.S. Patent Application No. 09/732,236 claims priority) and Pavlidis et al./XP-001028284. In addition, the Declaration indicates that the other co-author of Pavlidis

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et al./XP-001028284 participated with him, along with Peter F. Symosek and Bernard S. Fritz, in monetary contribution only with regard to the subject matter of Exhibit B. However, Mr. Papanikolopoulos did not directly participate in the subject matter claimed in Exhibit A. As such, Pavlidis et al./XP-001028284 is removable as a reference against the above-identified U.S. Patent Application No. 09/732,236. *See, for example*, M.P.E.P. §716.10; *In re Katz*, 687 F.2d 450, 215 USPQ 14 (CCPA 1982).

In view of the above, claims 1-37 are not obvious in view of the references cited.

**Allowable Subject Matter**

Applicant further acknowledge that claims 22, 24, 28, 30, and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. However, Applicant at this time has not rewritten such claims in independent form as it is believed that such claims are dependent from claims that are in allowable form.

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**Summary**

It is respectfully submitted that the pending claims are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicant's Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted for  
PAVLIDIS

By

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9 Nov 2004

Date

**CERTIFICATE UNDER 37 CFR §1.8:**

The undersigned hereby certifies that the Transmittal Letter and the paper(s), as described hereinabove, are being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this

9 day of November, 2004, at 3:00 pm (Central Time).

By: 

Name:

Sandy Truchart